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1 MICHAEL W. BRIMLEY, ESQ.  
 2 Nevada Bar No. 3684  
 3 DALE B. RYCRAFT JR, ESQ.  
 4 Nevada Bar No. 7165  
**PEEL, BRIMLEY & SPANGLER**  
 5 701 N. Green Valley Parkway, Suite 220  
 6 Henderson, Nevada 89074-6178  
 7 (702) 990-7272  
 8 Attorneys for  
 9 TERRACON CONSULTANTS WESTERN, INC.;  
 10 TERRACON, INC.; MARK J. OWENS;  
 11 and JAMES E. MCNUTT

12  
**UNITED STATES DISTRICT COURT**  
 13  
**DISTRICT OF NEVADA**

14 MANDALAY RESORT GROUP, fka  
 15 CIRCUS CIRCUS ENTERPRISES, INC., a  
 16 Nevada corporation; MANDALAY  
 17 DEVELOPMENT, fka CIRCUS CIRCUS  
 18 DEVELOPMENT CORP., a Nevada  
 19 corporation; and MANDALAY CORP., a  
 20 Nevada corporation,

CASE NO.:

**PETITION OF REMOVAL  
 OF CIVIL ACTION**

CV-S-04-1488-RCJ-PAL

Plaintiffs,

v.

21 TERRACON CONSULTANTS WESTERN,  
 22 INC., an Iowa corporation; TERRACON,  
 23 INC. an Iowa corporation; MARK J.  
 24 OWENS, an individual; JAMES E.  
 25 MCNUTT, an individual; and DOES 1  
 through 50, inclusive,

Defendants.

**TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA**

26 Defendants TERRACON, INC. (incorrectly identified above as Terracon Consultants  
 27 Western, Inc., hereinafter "TWC"), MARK J. OWENS and JAMES E. MCNUTT  
 28 (collectively "Defendants") petitions for the removal of this action to the United States District  
 Court, and, in support thereof, states as follows:

1. On September 30, 2004, an action was commenced in the District Court, State  
 of Nevada, in and for the County of Clark, entitled MANDALAY RESORT GROUP, fka  
 CIRCUS CIRCUS ENTERPRISES, INC., a Nevada corporation; MANDALAY

**PEEL, BRIMLEY & SPANGLER**  
 701 N. Green Valley Parkway, Suite 220  
 Henderson, Nevada 89074-6178  
 (702) 990-7272 ♦ Fax (702) 9907273

1 DEVELOPMENT, fka CIRCUS CIRCUS DEVELOPMENT CORP., a Nevada corporation;  
 2 and MANDALAY CORP, Plaintiffs v. TERRACON CONSULTANTS WESTERN, INC., an  
 3 Iowa corporation; TERRACON, INC. an Iowa corporation; MARK J. OWENS, an individual;  
 4 JAMES E. MCNUTT, an individual, Defendants, Case No. A492902. A true copy of the  
 5 Complaint is attached hereto as Exhibit A.

6       2.       The first date upon which Defendant Terracon received a copy of said  
 7 Complaint was October 14, 2004. The thirty-day tolling period for removal does not begin to  
 8 run until a party has received a copy of the Complaint and been properly served. *See Murphy*  
 9 *Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999). Therefore, this  
 10 Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

11       3.       At the time of filing the Complaint, Defendant Terracon was, and still is, a  
 12 Corporation under the laws of the State of Iowa, having its principal place of business in the  
 13 State of Iowa.

14       4.       Defendant Terracon is informed and believes, and therefore alleges, that at the  
 15 time of service of the Summons and Complaint, Plaintiff was a corporation incorporated under  
 16 the laws of the State of Nevada. *See* Complaint at ¶ 1 - 3, attached as Exhibit A.

17       5.       Defendant Terracon is informed and believes, and therefore alleges, that at the  
 18 time of filing the Complaint, Co-Defendant Mark J. Owens., was and still is an individual who  
 19 resides and does business in Clark County, Nevada. *See* Complaint at ¶ 6, attached as Exhibit  
 20 A.

21       6.       Defendant Terracon is informed and believes, and therefore alleges, that at the  
 22 time of filing the Complaint, Co-Defendant JAMES E. MCNUTT, was and still is an  
 23 individual who resides and does business in Clark County, Nevada. *See* Complaint at ¶ 8,  
 24 attached as Exhibit A.

25       7.       Defendant Terracon is informed and believes, and therefore alleges, that at the  
 26 time of filing the Complaint, Co-Defendants Mark J. Owens and James E. McNutt are not  
 27 proper Defendants. Pursuant to Plaintiffs' Complaint, each Individual Defendants was

1 employed by TCW, and was acting as an employee, agent, or representative of Terracon. See  
2 Complaint at 7 and 9, attached as Exhibit A. In addition, if a cause of action had existed, the  
3 time to sue Co-Defendants Mark J. Owens and James E. McNutt is barred by virtue of the  
4 statute of limitations. *See Miller v. Home Depot*, 199 F. Supp. 502, 510-514 (W.D. La. 2001);  
5 *Rainwater v. Lamar Life Insurance Company*, 246 F.Supp.2d 546 (S.D. Miss. 2003); *Russell*  
6 *Petroleum Corp. Environ Products, Inc.*, 333 F. Supp.2d 1228 (M.D. Ala. 2004). Plaintiffs  
7 allege that the fact of injury became known before May 1998, when compaction grouting was  
8 done by plaintiffs in an attempt to address the building's movement. *See* Complaint ¶¶ 23-24,  
9 attached as Exhibit A. Thus, on the face of Plaintiffs' Complaint the fact of injury was known  
10 to plaintiffs since May, 1998, and the limitations period had long since lapsed before the filing  
11 of this suit. It is apparent that Plaintiff has fraudulently joined Co-Defendants Mark J. Owens  
12 and James E. McNutt in order to defeat diversity jurisdiction. A plaintiff cannot fraudulently  
13 join a party simply to defeat removal jurisdiction. *Kruso v. International Telephone &*  
14 *Telegraph Corp.*, 872 F.2d 1416, 1424 (9th Cir. 1989).

15       8.      Defendant Terracon will also timely file a Notice of Removal in Nevada  
16      District Court, County of Clark, a true and correct copy of which is attached as Exhibit B.  
17      Based on the foregoing, Defendant Terracon removes the above action now pending in the  
18      District Court, in and for the County of Clark, Nevada, as Case No. A492902, to this Court.

19 DATED this 28<sup>th</sup> day of October, 2004.

## PEEL, BRIMLEY & SPANGLER

MICHAEL W. BRIMLEY, ESQ.

Nevada Bar No. 3684

DALE B. RYCRAFT JR., ESQ.

Nevada Bar No. 7165

701 N. Green Valley Parkway, Suite 220  
Henderson, Nevada 89074-6178

Attorneys for

TERRACON CONSULTANTS WESTERN,  
INC.; TERRACON, INC.; MARK J. OWENS;  
and JAMES E. McNUTT

## CERTIFICATE OF MAILING

Pursuant to L.R. 5-1, I hereby certify that service of the foregoing was made this date by depositing a true copy of the same for mailing in Las Vegas, Nevada, addressed to each of the following:

Dennis R. Haney, Esq.  
HANEY WOLOSON & MULLINS  
1117 South Rancho Dr.  
Las Vegas, NV 89102  
Attorneys for Plaintiffs

DATED this 28<sup>th</sup> day of October 2004.

An employee of Peel, Brimley & Spangler

**PHEEL, BRIMLEY & SPANGLER**  
701 N. Green Valley Parkway, Suite 220  
Henderson, Nevada 89074-6178  
(702) 990-7272 ♦ Fax (702) 990-7273

# Exhibit A

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**ORIGINAL****FILED**

1 COMP  
 2 HANEY WOLOSON & MULLINS  
 3 DENNIS R. HANEY, ESQ.  
 4 Nevada Bar # 00016  
 5 1117 South Rancho Drive  
 6 Las Vegas, Nevada 89102  
 Telephone: (702) 474-7557  
 Facs mile: (702) 474-7009  
 Attorneys for PLAINTIFFS

SEP 30 12 25 PM '04

*Eliza B. Rodriguez*  
CLERK

## 7 DISTRICT COURT

## 8 CLARK COUNTY, NEVADA

9  
 10 MANDALAY RESORT GROUP, fka CIRCUS CIRCUS ) CASE NO.: A492902  
 ENTERPRISES, INC., a Nevada corporation; ) DEPT. NO.: *X1*  
 11 MANDALAY DEVELOPMENT, fka CIRCUS CIRCUS )  
 DEVELOPMENT CORP., a Nevada corporation; and )  
 12 MANDALAY CORP., a Nevada corporation, )  
 )  
 13 Plaintiffs, ) COMPLAINT FOR DAMAGES  
 )  
 14 )  
 15 VS. )  
 )  
 16 TERRACON CONSULTANTS WESTERN, INC., an )  
 Iowa corporation; TERRACON, INC., an Iowa )  
 17 corporation; MARK J. OWENS, an individual; JAMES )  
 E. McNUTT, an individual; and DOES 1 through 50, )  
 18 inclusive, )  
 )  
 19 Defendants. )  
 )  
 20 )

21  
 22 COMPLAINT FOR DAMAGES

23 PLAINTIFFS, by and through their counsel, the law firm of Haney, Woolson & Mullins, complain  
 24 against Defendants, and each of them, and allege as follows:

25 *III*  
 26 *III*  
 27  
 28  
 29 RECEIVED  
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 31 COUNTY CLERK

PARTIES

3 1. Plaintiff MANDALAY RESORT GROUP, formerly known as CIRCUS CIRCUS  
4 ENTERPRISES, INC., is a corporation incorporated under the laws of the State of Nevada, with its principal  
5 place of business in Clark County, Nevada.

6 2. Plaintiff MANDALAY DEVELOPMENT, formerly known as CIRCUS CIRCUS  
7 DEVELOPMENT CORP., is a corporation incorporated under the laws of the State of Nevada, with its  
8 principal place of business in Clark County, Nevada, and it is a wholly-owned subsidiary of MANDALAY  
9 RESORT GROUP.

10 3. Plaintiff MANDALAY CORP. is a corporation incorporated under the laws of the State of  
11 Nevada, with its principal place of business in Clark County, Nevada, and it is a wholly-owned subsidiary of  
12 MANDALAY RESORT GROUP. Plaintiffs will be referred to collectively herein as "PLAINTIFFS" or  
13 "MANDALAY."

14 4. At all times relevant to this lawsuit, TERRACON CONSULTANTS WESTERN, INC.  
15 (hereinafter "TCW") was an Iowa corporation, which was transacting business and performing soils  
16 engineering services in Clark County, Nevada.

17 5. At all times relevant to this lawsuit, TERRACON, INC. (hereinafter "TERRACON") was an  
18 Iowa corporation, which was transacting business and performing soils engineering services in Clark County,  
19 Nevada.

20 6. At all times relevant to this lawsuit, MARK J. OWENS (hereinafter "OWENS") is an individual  
21 who resides and does business in Clark County, Nevada.

22 7. Upon information and belief, at all times relevant to this lawsuit, OWENS was employed by  
23 TCW, and was acting as an employee, agent, or representative of each other DEFENDANT and was acting  
24 with the knowledge and consent of each other DEFENDANT and within the purpose and scope of such  
25 employment, agency, or representation in doing or failing to do the things alleged in this Complaint.

26 8. At all times relevant to this lawsuit, JAMES E. McNUTT (hereinafter "McNUTT") is an  
27 individual who resides and does business in Clark County, Nevada.

28 9. Upon information and belief, at all times relevant hereto, McNutt was employed by TCW, and  
was acting as an employee, agent or representative of each other DEFENDANT and was acting with the

1 knowledge and consent of each other DEFENDANT and within the purpose and scope of such employment.  
2 agency, or representation in doing or failing to do the things alleged in this Complaint.

3 10. PLAINTIFFS do not know the true names and capacities of DEFENDANTS sued herein as  
4 DOES 1 through 50, inclusive, and therefore sue said DEFENDANTS by such fictitious names.  
5 PLAINTIFFS will amend this Complaint to state the true names and capacities of the fictitiously named  
6 DEFENDANTS when the same are ascertained. PLAINTIFFS are informed and believe and based thereon  
7 allege that each of the fictitiously named DEFENDANTS are legally responsible in some manner for the  
8 events and damages alleged in this Complaint under the causes of action stated herein.

9 11. PLAINTIFFS are informed and believe and based thereon allege that at all times mentioned  
10 herein, each of the DEFENDANTS was the reinsurer, agent, partner, joint venturer, associate and/or  
11 employee of one or more of the other DEFENDANTS and was acting in the course and scope of such  
12 agency, partnership, joint venture, association relationship and/or employment when the acts giving rise to  
13 the causes of action occurred.

14 **II**

15 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

16 12. At all times relevant to this lawsuit, PLAINTIFFS had an interest in the commercial property  
17 located at 3950 Las Vegas Boulevard South, Las Vegas, Nevada 89119.

18 13. Plaintiff MANDALAY DEVELOPMENT was at all times the managing general contractor  
19 for construction of the Mandalay Bay Resort and Casino (hereinafter the "PROPERTY"), and at all times  
20 relevant to this Complaint, Mandalay Development was a duly licensed general contractor in the State of  
21 Nevada.

22 14. Plaintiff MANDALAY RESORT GROUP is the sole shareholder of MANDALAY CORP.  
23 and MANDALAY DEVELOPMENT.

24 15. Plaintiff MANDALAY CORP. is the owner and operator of the Mandalay Bay Resort and  
25 Casino.

26 16. On or about March 4, 1996, MANDALAY DEVELOPMENT and TCW entered into a written  
27 contract (the "AGREEMENT"). Pursuant to the AGREEMENT, DEFENDANTS were to provide certain  
28 geotechnical engineering services, including a geotechnical exploration for construction of a casino/resort on  
the PROPERTY.

1 17. Upon information and belief, OWENS is a professional engineer and performed work on the  
2 PROPERTY pursuant to the AGREEMENT between the parties.

3 18. Upon information and belief, McNUTT is a professional engineer and performed work on the  
4 PROPERTY pursuant to the AGREEMENT between the parties.

5 19. On or about November 26, 1996, DEFENDANTS, and each of them, submitted a geotechnical  
6 exploration report (the "REPORT") to PLAINTIFFS, which provided information and geotechnical  
7 engineering recommendations relative to the following:

- 8 • Subsurface soil conditions
- 9 • General geology of the area
- 10 • Foundation design and construction
- 11 • Retaining wall design and construction
- 12 • Floor slab design and construction
- 13 • Pavement design and construction
- 14 • Earthwork
- 15 • Utility trench backfill

16 In the REPORT, DEFENDANTS, and each of them, recommended a mat-type foundation for THE  
17 PROPERTY's structures. DEFENDANTS, and each of them, further opined that the "maximum ultimate  
18 settlement of the hotel towers supported by mat foundations as recommended, should not exceed 3 1/2 to 4 1/2  
19 inches."

20 20. Construction commenced, on or about April, 1997. From the commencement of construction,  
21 and thereafter, PLAINTIFFS relied upon the findings and recommendations contained in the REPORT.

22 21. During the course of construction of the PROPERTY in 1998, excessive movement of the earth  
23 beneath the building foundation occurred, ultimately resulting in subsidence, settlement, deflection and  
24 twisting of the structures well above the design tolerances.

25 22. During construction of the tower at the PROPERTY, the structure subsided over eighteen (18)  
26 inches or five (5) times the amount than predicted by DEFENDANTS based on their engineering analysis.  
27 The excessive movement downward caused substantial damage to the structures and hotel rooms.

28 23. Because of imminent threat to the structural integrity of the structures and the consequent  
business interruption, which would occur without appropriate protection and preservation of the PROPERTY,

1 PLAINTIFFS, after consultation with geological, structural and other experts, commenced to protect and  
2 preserve the PROPERTY through the use of compaction grouting in May of 1998, followed by the installation  
3 of a micro-pile system under the high-rise tower on the PROPERTY, which ultimately terminated the  
4 excessive movement and settlement.

5 24. At all times relevant hereto, the County of Clark, Nevada, in the exercise of its health, safety and  
6 welfare, and police powers over PLAINTIFFS, required PLAINTIFFS to undertake appropriate steps to assure  
7 the safety and integrity of the PROPERTY, including the compaction grouting and ultimately the installation  
8 of the micro-pile system.

9 25. The buildings on the PROPERTY were substantially completed on March 2, 1999. However, as  
10 a condition of occupancy, the Building Department for the County of Clark, Nevada required constant  
11 monitoring of the structure for movement.

12 26. As a proximate result of the excessive movement, subsidence, settlement, deflection and  
13 twisting of the buildings on the PROPERTY, PLAINTIFFS had to retain subcontractors and other trades and  
14 professions to arrest and correct this condition at substantial cost.

15 III

16 **FIRST CLAIM FOR RELIEF**  
17 **(BREACH OF CONTRACT)**

18 27. PLAINTIFFS refer to, repeat and reallege each of the allegations in Paragraphs 1 through 26 of  
19 this Complaint and incorporate said allegations into the First Claim for Relief as though fully set forth herein.

20 28. PLAINTIFFS have performed each and every obligation required of them under  
21 the AGREEMENT that was entered into between the MANDALAY DEVELOPMENT and TCW.

22 29. DEFENDANTS have breached the AGREEMENT by, among other things, providing  
23 inadequate and/or substandard work and/or materials, including, but not limited to, the following:

24

- 25 • Failing to take an adequate number of soils borings at sufficient depths in order to understand  
the soils condition at the site;
- 26 • Failing to take soils borings within the footprint of the proposed site of the casino/resort; and
- 27 • Recommending a design of the foundation which was inadequate given the soils condition at  
the site;

- Recommending a repair method that was susceptible of causing further earth movement below the foundation of the casino/resort.

3 30. DEFENDANTS' breaches have resulted in a variety of defects with the subject PROPERTY  
4 including, but not necessarily limited to, excessive earth movement under the foundation of the casino resort.

5       31.    As a direct and proximate result of the material breaches by DEFENDANTS, and each of them,  
6    PLAINTIFFS have suffered direct and consequential damages in an amount in excess of \$10,000.00.

7       32. DEFENDANT'S breaches amount to a breach of the covenant of good faith and fair dealing that  
8 is implied into every contract.

9. 33. PLAINTIFFS have been forced to retain the services of counsel, and are entitled to an award of  
10. attorneys' fees and costs from DEFENDANTS.

IV

**SECOND CLAIM FOR RELIEF**

**(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING)  
(AGAINST ALL DEFENDANTS)**

4 34. PLAINTIFFS refer to, repeat, and reallege each of the allegations in Paragraphs 1 through 33 of  
5 this Complaint and incorporate said allegations into the Second Claim for Relief as though fully set forth  
6 herein.

35. The AGREEMENT between MANDALAY DEVELOPMENT and TCW contains and implied covenant of good faith and fair dealing.

36. DEFENDANTS breached the covenant of good faith and fair dealing, by, among other things, providing inadequate and/or substandard work and/or materials, and recommending a repair method that was susceptible of causing further earth movement below the foundation of the casino/resort.

22 37. As a direct and proximate result of the material breaches of the AGREEMENT by  
23 DEFENDANTS, PLAINTIFFS suffered direct and consequential damages in excess of \$10,000.00.

24       38. PLAINTIFFS have been forced to retain the services of counsel to prosecute this  
25 action and are entitled to an award of attorneys' fees and costs from DEFENDANTS.

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## IV

**THIRD CLAIM FOR RELIEF****(NEGLIGENCE)****(AGAINST ALL DEFENDANTS)**

39. PLAINTIFFS refer to, repeat, and reallege each of the allegations in Paragraphs 1 through 38 of this Complaint and incorporate said allegations into this Third Claim for Relief as though fully set forth herein.

40. PLAINTIFFS are informed and believe and thereupon allege that DEFENDANTS, and each of them, including DOES 1 through 50, were and are builders, contractors, and/or engineers, or other persons, entities or professionals who participated in the process of design, engineering, and/or construction of and/or repair to the subject structures on the PROPERTY, and who performed works of labor, supplied materials, equipment and/or services necessary for the building and construction, including supervision of construction of the Project with the knowledge that the units would be used by members of the public. In so doing, said DEFENDANTS, and each of them, in the capacity as builder, engineer, or otherwise, caused the subject premises and subject structures to be designed, engineered and/or constructed through their own works of labor, their supplying of materials, equipment and services, and through causing other contractors and subcontractors, including other DEFENDANTS, and each of them, to perform works of labor, to supply materials, equipment and services in order to properly complete the subject property and subject structures so that it could be used by members of the public.

41. PLAINTIFFS are informed and believe and thereupon allege that DEFENDANTS, and each of them, whether builder, contractor, engineer or otherwise, negligently, carelessly, tortuously, and wrongfully failed to use reasonable care in the construction of the PROPERTY as alleged herein.

42. PLAINTIFFS are informed and believe and thereupon allege that DEFENDANTS, and each of them, whether builder, contractor, engineer or otherwise, performed work, labor and/or services upon the subject premises and subject structure, and each knew or should have known that if the subject structure and subject premises were not properly or adequately designed, engineered, supervised and/or constructed, that the owners and users would be substantially damaged thereby, and that the subject structures would be defective and not of merchantable quality. Likewise, said DEFENDANTS, and each of them, knew or reasonably should have known that if the real property and structures and improvements thereon including, but not

1 limited to, the above-described defective conditions were not adequately designed, engineered, constructed or  
2 installed, the owners and users would be substantially damaged thereby and the subject structures would be  
3 defective and not of merchantable quality.

4 43. The DEFENDANTS, and each of them, named herein were under a duty to exercise ordinary  
5 care as builder, contractor, engineer or otherwise to avoid reasonably foreseeable injury to users of the subject  
6 premises and subject structures, and knew or should have foreseen with reasonable certainty that users would  
7 suffer the monetary damages set forth herein if said DEFENDANTS, and each of them, failed to perform their  
8 duty to cause the subject premises and subject structures to be designed, engineered and completed in a proper  
9 and workmanlike manner and fashion.

10 44. In performing the works of a builder and/or contractor, engineer or otherwise, said  
11 DEFENDANTS, and each of them, failed and neglected to perform the work, labor and services properly or  
12 adequately in that each said DEFENDANT so negligently, carelessly and in an unworkmanlike manner  
13 performed the aforesaid work, labor and/or services such that the subject premises and subject structures as  
14 described herein were designed, engineered and/or constructed improperly, negligently, carelessly and/or in an  
15 unworkmanlike manner.

16 45. As a direct and proximate result of the foregoing negligence, carelessness and unworkmanlike  
17 conduct, actions and/or omissions by said DEFENDANTS, and each of them, PLAINTIFFS have suffered  
18 damages in amounts according to proof at trial.

19 46. PLAINTIFFS have been forced to retain the services of counsel, and are entitled to an award of  
20 reasonable attorneys' fees and costs incurred in this matter.

21 **W H E R E F O R E**, PLAINTIFFS pray for judgment as follows:

- 22 1. For compensatory, incidental and consequential damages in excess of  
23 \$10,000.00;
- 24 2. For prejudgment interest;
- 25 3. For an award of attorneys' fees;
- 26 4. For costs and expenses incurred herein; and

27 //

28 //

1 5. For such other and further relief this Court deems just and appropriate under the circumstances.

2 Dated this 29<sup>th</sup> day of September, 2004.

3 HANEY WOLOSON & MULLINS

4  
5 BY: \_\_\_\_\_

6 DENNIS R. HANEY  
7 Nevada Bar # 000016  
8 1117 South Rancho Drive  
9 Las Vegas, Nevada 89102  
10 Telephone: (702) 474-7557  
11 FAX: (702) 474-7009  
12 Attorneys for PLAINTIFFS

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# **Exhibit B**

1 NOTC  
2 MICHAEL W. BRIMLEY, ESQ.  
3 Nevada Bar No. 3684  
4 DALE B. RYCRAFT JR., ESQ.  
5 Nevada Bar No. 7165  
6 **PEEL, BRIMLEY & SPANGLER**  
7 701 N. Green Valley Parkway, Suite 220  
Henderson, Nevada 89074-6178  
(702) 990-7272  
8 Attorneys for  
9 TERRACON CONSULTANTS WESTERN, INC.;  
TERRACON, INC.; MARK J. OWENS;  
and JAMES E. MCNUTT

10  
11 DISTRICT COURT  
12  
13 CLARK COUNTY, NEVADA  
14

15 MANDALAY RESORT GROUP, fka  
16 CIRCUS CIRCUS ENTERPRISES, INC., a  
Nevada corporation; MANDALAY  
17 DEVELOPMENT, fka CIRCUS CIRCUS  
DEVELOPMENT CORP., a Nevada  
corporation; and MANDALAY CORP., a  
Nevada corporation,

18 Plaintiffs,

19 v.

20 TERRACON CONSULTANTS WESTERN,  
21 INC., an Iowa corporation; TERRACON,  
INC. an Iowa corporation; MARK J.  
OWENS, an individual; JAMES E.  
MCNUTT, an individual; and DOES 1  
through 50, inclusive,

22 Defendants.

23 CASE NO.: A492902  
DEPT. NO.: XI

24  
25 NOTICE OF REMOVAL  
26 OF CIVIL ACTION

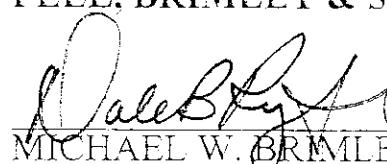
27  
28 COMES NOW, TERRACON, INC. (incorrectly identified above as Terracon  
Consultants Western, Inc.), MARK J. OWENS and JAMES E. MCNUTT (collectively  
“Defendants”) in the above-styled action, and pursuant to 28 U.S.C. § 1446(d), hereby notifies  
that the Defendants have filed a petition for the removal of the above-styled action to the  
United States District Court of Nevada. A copy of said Petition of Removal of Civil Action is  
attached hereto has Exhibit “A”.

PEEL, BRIMLEY & SPANGLER  
701 N. Green Valley Parkway, Suite 220  
Henderson, Nevada 89074-6178  
(702) 990-7272 • Fax (702) 990-7273

1 By operation of law, the case is now removed and all further proceedings in the  
2 District Court of Clark County, Nevada are stayed.

3  
4 DATED this 28<sup>th</sup> day of October, 2004.

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9 PEEL, BRIMLEY & SPANGLER

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12 MICHAEL W. BRIMLEY, ESQ.  
13 Nevada Bar No. 3684  
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18 Attorneys for  
19 TERRACON CONSULTANTS WESTERN,  
20 INC.; TERRACON, INC.; MARK J. OWENS;  
21 and JAMES E. MCNUTT

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CERTIFICATE OF MAILING

Pursuant to Nevada Rule of Civil Procedure 5(b), I hereby certify that service of the foregoing was made this date by depositing a true copy of the same for mailing in Las Vegas, Nevada, addressed to each of the following:

Dennis R. Haney, Esq.  
HANEY WOLOSON & MULLINS  
1117 South Rancho Dr.  
Las Vegas, NV 89102  
Attorneys for Plaintiffs

DATED this 28<sup>th</sup> day of October 2004.

  
An employee of Peal, Brimley & Spangler

Peal, Brimley & Spangler  
701 N. Green Valley Parkway, Suite 220  
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